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ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN AND
RELATED MATTERS.

re Names

Hearing held
8th floor
180 Dundas Street West
Toronto, Ontario

Scot. Phas II

Submissions re

The Honourable Mr. Justice S.G.M. Grange

Commissioner

P.S.A. Lamek, Q.C.

Counsel

E.A. Cronk

Associate Counsel

Thomas Millar

Administrator

Notice

Transcript of evidence
for

November 15, 1983

VOLUME 65

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ROYAL COMMISSION OF INQUIRY INTO CERTAIN
DEATHS AT THE HOSPITAL FOR SICK CHILDREN
AND RELATED MATTERS.

Hearing held on the 8th Floor,
180 Dundas Street West, Toronto,
Ontario, on Tuesday, the 15th
day of November, 1983.

- - - - -


THE HONOURABLE MR. JUSTICE S.G.M. GRANGE - Commissioner
THOMAS MILLAR - Administrator
MURRAY R. ELLIOT - Registrar

- - - - -

APPEARANCES:

P.S.A. LAMEK, Q.C.)	Commission Counsel
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T.C. MARSHALL, Q.C.)	Counsel for the Attorney
D. HUNT)	General and Solicitor General
L. CECCHETTO)	of Ontario (Crown Attorneys
	and Coroner's Office)
I.G. SCOTT, Q.C.)	Counsel for The Hospital for
I.J. ROLAND)	Sick Children
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	and 35 Registered Nurses at
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D. BROWN	Counsel for Susan Nelles -
	Nurse
G.R. STRATHY	Counsel for Phyllis Trayner -
	Nurse

(Cont'd)



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APPEARANCES: (Continued)

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S. LABOW

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Mr. & Mrs. Gionas, Mr. & Mrs.
Inwood, Mr. & Mrs. Turner, and
Mr. & Mrs. Lutes (parents of
deceased children)

W.W. TOBIAS

Counsel for Mr. & Mrs. Hines
(parents of deceased child
Jordan Hines)

J. SHINEHOFT

Counsel for Lorie Pacsai and
Kevin Garnet (parents of
deceased child Kevin Pacsai)

VOLUME 65



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A/BM/ak

1
2 ---Upon commencing at 10:00 a.m.

3 THE COMMISSIONER: There are enough
4 copies of what I have described here as a Judgment,
5 so, you don't need to take notes. There are also
6 two appendices; one is the Attorney General's state-
7 ment and the other one is the Order-in-Council itself.
8 There aren't enough of those for everybody. I assume
9 that probably everybody had them but if you need
10 them there were some copies but I will make them
11 available as soon as I have finished.

12 JUDGMENT:

13 In this Commission I am charged with
14 the task of determining the cause of death of 36
15 children who died in Wards 4A and 4B of the Hospital
16 for Sick Children in Toronto between the 1st of July
17 1980 and the 31st of March 1981. In fact, only 34
18 children died in the wards during that period but we
19 have without objection been considering the cause of
20 death of 2 other children, one who died in the Wards
21 but one day outside the period on the 30th of June
22 1980 and one who died during the period but not in
23 either of the wards having been removed therefrom
24 to the Intensive Care Unit of the hospital shortly
25 before his death. I am also required to consider
the circumstances of the investigation and prosecution



1
2 of charges preferred against one Susan Nelles,
3 arising out of the deaths of 4 of those 36 infants.
4 The charges proceeded to a Preliminary Inquiry
5 which was terminated on the 21st of May 1982 with
6 the discharge of the accused.

7 For convenience, the two issues are
8 being heard separately. The first, namely the cause
9 of death, has occupied us since the 31st of May,
10 1983; it has proceeded for more than 60 days and is
11 not yet close to completion. The second issue,
12 namely the circumstances of the investigation and
13 prosecution, has not yet commenced. Two problems
14 have, however, been raised which I think must now
15 be resolved. I state these problems as follows:

16 (1) Does the first issue require or
17 entitle me, if I should reach
18 the conclusion that the death of
19 any child was the result of the
20 action of any person or persons,
21 to name that person or persons?

22 (2) Does the second issue require or
23 entitle me to consider the
24 investigation after the discharge
25 of Susan Nelles?

These problems are in one sense not



1
2 urgent. The consideration of the issue as to the
3 investigation and prosecution is still some months
4 away and the Report is farther still. Moreover,
5 the problem raised in the first question may prove
6 to be academic. I originally thought that the
7 problems could await the occasion when they had to
8 be decided but I now believe that fairness requires
9 that those persons who might be affected know now
10 the extent of their potential exposure and that all
11 interested parties know now the extent of the inquiry
12 on the 2nd issue so that they can prepare their
13 cases properly. It is also I think appropriate that
14 any party affected or interested should be given
15 the opportunity, if he asserts that I have erred in
16 the resolution of either problem, to take action to
17 have this judgment judicially reviewed. I need
18 hardly add that all persons conceivably interested
19 or affected have been given the opportunity to be
20 represented at the hearings to date, and to make
21 submissions as to the resolution of these problems.

22 It is important to know the background
23 of the issues and for that purpose I attach as
24 Appendix I, the statement of the Attorney General
25 of Ontario made to the Legislature upon the appoint-
ment of this Commission. I appreciate, of course,



1
2 that it is not the Attorney General's view that is
3 determinative of the problems but the law and the
4 Terms of Reference. The Order-in-Council appointing
5 the Commission is set forth as Appendix II.

6 I turn now to the first problem.
7 The children were all of course seriously ill,
8 almost all of them suffering from an identifiable
9 heart disease. The concern is whether the children
10 (and it applies, of course, to each one separately)
11 died from that disease or other "natural causes" or
12 whether they died from "unnatural causes". I do not
13 prejudge the matter but the evidence so far has
14 indicated that the most likely unnatural cause is
15 toxicity resulting from the administration of a
16 drug known as Digoxin which if administered in
17 therapeutic quantities often aids in the treatment
18 of heart disease. The problem simply stated is that
19 if I should find upon the evidence that any child
20 died from an unnatural cause, eg. the administration
21 of an overdose of digoxin (a finding which I am
22 clearly entitled to reach) and if the evidence also
23 indicates that a certain person or persons administered
24 the drug or participated in its administration
25 either by accident or design am I entitled - or
indeed required - to so state.



1
2
3 I think I should first of all dispose
4 of a constitutional argument. This is of course a
5 Provincial Commission and it is argued that the
6 Province is constitutionally incapable of setting
7 up an inquiry whose findings may involve the
8 determination that a specific crime was committed.
9 I think with respect there is nothing in the argument.
10 The cases of Di Iorio & Fontaine v. the Warden of
11 the Common Jail of Montreal, 73 D.L.R. (3d) 491 and
12 the Attorney General of Quebec and Keable v. the
13 Attorney General of Canada, 90 D.L.R. (3d) 161 have
14 clearly established the jurisdiction of the Province
15 under head 14 of Section 92 of the British North
16 America Act - now the Constitution Act 1867 - (the
17 Administration of Justice) to authorize the investi-
18 gation of general or specific crimes, notwithstanding
19 that the Criminal Law and Criminal procedure are
20 reserved to the Federal power under head 27 of
21 Section 91 of the same Act. It may be, as suggested
22 in the concurring judgment of Estey, J in the latter
23 case, that there remains some requirement of
24 Provincial Inquiries in investigating crime in some
25 respects to comply with Federal procedural rules but
that question is not before me at least at this time;
indeed it may never arise.



1
2
3 The real problem in the first question
4 is to resolve the apparent conflict between the
5 requirement to "report on ... how and by what means
6 (the) children ... came to their deaths" and the
7 injunction "without expressing any conclusion of law
8 regarding civil or criminal responsibility".

9 I need hardly state that a Commission's
10 Terms of Reference control the scope of its inquiry.
11 However, I find no difficulty in interpreting the
12 particular term as including the right and obligation
13 if the evidence justifies it to determine not only
14 if an overdose of Digoxin was administered but all
15 the circumstances of its administration including
16 the identity of the administrator. In my view the
17 phrase "how and by what means" dictates that conclu-
18 sion. "How" may conceivably be confined to the
19 method of bringing about death but "by what means"
20 necessarily encompasses not only the method but
21 the identity of the actor who adopted consciously
22 or unconsciously that method. In Sir James Murray's
23 English Dictionary, Vol. 6, Part 2, p. 270 "mean"
24 as a noun is described in Example 10 as, "an instrument,
25 agency, method, or course of action, by the employment
of which some object is or may be attained, or which
is concerned in bringing about some result.
Often contrasted with end. Often



1
2 predicatively (of persons as well as things), To be
3 the means (or the mean) of" and one of the literary
4 examples is given as "I was the means of this being
5 done".

6 To turn then to the other side of
7 the conflict, I must determine the means whereby the
8 children met their deaths "without expressing any
9 conclusion of law regarding civil or criminal
10 responsibility". It is possible to resolve the
11 conflict by stating that no conclusion I reach or
12 express can be one of legal responsibility. This
13 is not a trial and I have no authority to convict,
14 acquit, punish, penalize or reward any person. It
15 is also possible to say that I can find all the
16 facts which in combination would inevitably lead
17 to conviction or civil responsibility but stop short
18 of actually declaring that result. But either is
19 I think too narrow an interpretation. I am
20 satisfied that the Lieutenant Governor In Council
21 wanted to save the determination of legal
22 responsibility for the Courts where the procedures
23 will protect and respect the rights of an accused
24 in a criminal matter and the rights and obligations
25 of parties in a civil matter. Those rights will
inevitably be adversely affected if I adopt either
course.



1
2
3 There are, however, other rights
4 that must be respected. This is a matter of immense
5 public interest. It involves events in a hospital
6 which has earned great respect and has become a
7 national institution. It has occupied the attention
8 of the media and various inquiring bodies almost
9 without cessation for the past 2½ years. Yet all
10 the inquiries except this one have in large part -
11 and quite properly and necessarily - been conducted
12 in private. As the preamble of the Order-in-Council
13 sets forth, it is in part to allay the concern and
14 frustration of the public that this Commission has
15 been established. It has proved to be a very
16 lengthy and expensive inquiry. It would be a
17 tragedy if all of that concern and frustration
18 remained after the Report was released. It may be,
19 of course, that I will find it impossible to answer
20 the concerns of the public but it should not be
21 because the power to answer them is proscribed; it
22 should only be if the answer is not to be found.

23 And just as important in a quite
24 different way are the interests of the parents of
25 the children, many of whom are represented before
the Commission. They have a particular and very
tragic interest in all of the facts relating to the



1 death of their children. In some cases the interest
2 amounts, not unreasonably or unnaturally, to a need
3 to know.

4 The course of justice is often the
5 reconciliation of conflicting interests. Something
6 that is impossible, but I do not think it is
7 so in this instance. Our law does not give rise to
8 either criminal or civil responsibilities by the
9 mere doing of an act. In criminal law, there must
10 for a conviction be proved beyond a reasonable
11 doubt (except in some few statutory provisions not
12 applicable here) not only the act itself but a
13 criminal intent in the mind of the actor. For the
14 offence of murder or that of criminal negligence
15 causing death, the two offences perhaps most likely
16 to arise in the matter under consideration, the
17 Criminal Code requires certain very specific and
18 very special intents. Similarly in our civil law
19 an act itself does not necessarily give rise to
20 liability for damages or other relief to the person
21 affected. It must be shown that the actor owed a
22 duty and breached that duty and might reasonably
23 have foreseen the damages that occurred. It follows
24 that a finding by me of commission of the act either
25 by accident or by design (even if the finding were
that of a court of competent jurisdiction which it



1
2 would not be) would not without more give rise to
3 either criminal or civil responsibility.

4 As the Attorney General pointed out,
5 this Commission is quite different from a Coroner's
6 Inquiry but the restriction in the Terms of
7 Reference is identical with the statutory one found
8 in the Coroner's Act, R.S.O. 1980, Chapter 93,
9 Section 34 (2) and that found in many other
10 Provincial Acts. Accordingly, many cases under those
11 Acts were cited to me and two of them appear to be
12 relevant to the issue we are faced with here. In
13 re MacKenzie and MacArthur, 119 D.L.R. (3d) 529,
14 a finding of a Coroner's jury under the British
15 Columbia Act that a doctor treated the deceased
16 "in a careless fashion" was set aside. That I can
17 understand; carelessness is a legal concept carrying
18 with it legal consequences provided of course that
19 the carelessness caused the injury. In R. v.
20 Thibodeau, 116 C.C.C. 175, Michaud, C.J.Q.B.D. of
21 New Brunswick criticized a Coroner's finding which
22 was to the effect that the deceased died following
23 the discharge of a 16 gauge shotgun in his back,
24 that his wife fired the said gun and "thereby the
25 said Lina Thibodeau did murder the said Claude
Thibodeau." The case does not set forth the



1
2 provision of the New Brunswick Coroner's Act at the
3 time but I presume it is the same as ours. On page
4 182, Michaud, C.J.Q.B.D. stated "I am of the
5 opinion that the main cause of the difficulty in
6 the present instance was the part of the Coroner's
7 jury verdict charging Mrs. Thibodeau with the murder
8 of her husband. Had the coroner and the jury been
9 properly informed and directed, they would have
10 refrained from including that finding in their
11 verdict." Once again, this finding does not surprise
12 me; "murder" is a legal concept involving not just
13 the act of killing but a state of mind in the killing
14 and the rejection of all defences that might be
15 raised.

16 I do not intend to make any findings
17 of fact respecting the state of mind of any person
18 performing any act which might have criminal
19 consequences nor do I intend to go into the duty
20 owed by one person to another and whether or not that
21 duty was breached. Nor do I intend to consider the
22 defences that may be available under our law. I do,
23 however, intend to study any evidence relating to
24 the possibility of the administration of a Digoxin
25 overdose (or indeed the evidence relating to any
other act resulting in the unnatural death of any





1
2 child) to determine where I can whether or not the
3 administration was accidental, and where the evidence
4 justifies it I intend to identify the administrator,
5 and I shall answer the first question raised
6 accordingly.

7 I turn now to the second question
8 and the second problem which involves the scope of
9 the second stage of the Inquiry. The relevant Term
10 of Reference is number 4 namely "to enquire into
11 and report on the circumstances surrounding the
12 investigation, institution and prosecution of charges
13 arising out of the deaths of the above mentioned
14 4 infants". The reference to "the above mentioned
15 4 infants" is to Term of Reference number 1 which
16 refers to "the charge of murder relating to the
17 deaths of 4 infants" a charge against Miss Nelles
18 which was dismissed upon the Preliminary Inquiry.

19 Here there is no constitutional problem
20 and the question is whether this Inquiry should deal
21 only with the investigation up to the date of
22 discharge of Miss Nelles. The prosecution of course
23 ended at that time but the investigation has
24 continued and the problem is whether such continuing
25 investigation is the proper subject matter of this
Inquiry. I have concluded that it is not for



several reasons as follows:

(a) The term refers to "the above-mentioned 4 infants". The prosecution of Miss Nelles was indeed for the murder of 4 infants only. At some point the investigation embraced the deaths of many more infants but grammatically the investigation would seem to involve only the 4 with whose murder she was charged. The prosecution ceased with her discharge; it seems reasonable to confine the investigation to the same time limits as the prosecution.

(b) There is no concern expressed in the Order-in-Council with the investigation beyond the discharge of Miss Nelles. It is clear from the Attorney General's statement that he made a decision not to lay any further criminal charges "at this time". The propriety of that decision might conceivably have



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been put before me; it was not.

(c) If the inquiry into the investigation is to continue beyond the discharge of Miss Nelles it is impossible to say when it should stop. As I have said it continued and presumably it is still continuing to this date. Entirely apart from the danger of this Commission's hearings inhibiting that investigation, it would seem to involve my supervising that investigation even while the Report was being written.

For these reasons, I will confine the Inquiry to consideration of the investigation up to but not beyond the 21st of May, 1982, the date of discharge of Susan Nelles. Needless to say, this decision does not preclude the admission of evidence of events taking place after that date provided the evidence is relevant to either of the two issues before the Commission, namely those set forth in paragraphs numbered 3 and 4 of the Order-in-Council.

I repeat the questions that I raised



1
2 at the beginning of this judgment.

3 (1) Does the first issue require or
4 entitle me if I should reach the
5 conclusion that the death of any
6 child was the result of the action
7 of any person or persons, to name
8 that person or persons?

9 (2) Does the second issue require or
10 entitle me to consider the
11 investigation after the discharge
12 of Susan Nelles?

13 For the reasons I have given and
14 subject to the qualifications set forth in those
15 reasons, the answer to the first question is Yes;
16 the answer to the second question is No.
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B/DM/ko

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Now, there may be some comments and we have a motion that I have to deal with but I think we will take about 15 minutes now. There are copies available to you for distribution if anyone should want one. I will keep one for myself and we will recess for 15 minutes.
--- Short recess

- - - -



/BB/ko

1
2 --- Upon resuming

3 THE COMMISSIONER: Yes, Mr. Olah?

4 MR. OLAH: Mr. Commissioner, I just
5 wanted to be sure that you received a copy of the
6 Landreville decision. For my friends the citation for
7 the Landreville case is a decision of the Federal Court
8 Trial Division reported at 1977 75 D.L.R. (3d) 38.

9 The nub of this motion, Mr. Commissioner,
10 is I am seeking a ruling from you, sir, that the
11 purported notice, the notice in my respectful
12 submission does not constitute notice to my client is
13 invalid on the grounds that it fails to supply
14 sufficient particularity and thereby to meet the
15 mandatory requirements of Section 5(2) of the Public
16 Inquiries Act; alternatively, sir, that particulars
17 be provided; the third position I will be taking is
18 that in my respectful submission no notice could be
19 given in this case to my client given the history of
20 the matter as it relates to her.

21 Before embarking upon legal argument
22 it is perhaps best to review the chronology of events
23 as it relates to my client and, that is, Janet
24 Brownless.

25 You will recall, sir, that on June 21st,
1983, which was the very first day of hearings after



1
C 2 2 the hearing commenced in May I appeared and at that
3 time when Mr. Lamek opened, and this is to be found at
4 Volume 1 at page 1, standing was granted to a number of
5 nurses and nursing assistants on the Trayner team and
6 if I may just refer to the very passage that refers to
7 my client. This is from the transcript of June 21st:

8 "MR. LAMEK: At the May 31st hearing
9 you accorded standing, sir, to two
10 groups comprising nurses and secondly
11 RNAs and ward clerks. A member of the
12 Registered Nurses Group, Mrs. Sui Scott
13 is now separately represented, and I
14 take it there is no question but that
15 she individually should have standing
16 in this Commission?

17 THE COMMISSIONER: No. No problem
18 about that.

19 MR. LAMEK: Mr. Commissioner, there
20 are two RNAs, Registered Nursing
21 Assistants, who are now separately
22 represented: Mrs. Christie, by the
23 Knazan Jackman firm, and Mrs. Janet
24 Vereecken, formerly Janet Brownless,
25 by the Beard Winter firm, and similarly
I take it those two Registered Nursing



1
2 "Assistants may have standing in their
3 own right?

4 THE COMMISSIONER: Yes. No problem."

5 I raise that because in one of your
6 statements you indicated that the granting of standing
7 was to be deemed and viewed as notice under Section
8 5(2).

9 THE COMMISSIONER: I don't know that I
10 put it that way. Did I say that?

11 MR. OLAH: Well, I will come to that,
12 sir, and that is certainly the meaning I took from it.

13 The next matter that is relevant for the
14 purposes of this argument is my letter to Mr. Lamek on
15 June 21st, 1983.

16 THE COMMISSIONER: Yes, I had better
17 have that, it is an exhibit?

18 MR. OLAH: I believe it is - certainly
19 Mr. Lamek's letters were marked as part of Exhibit 220,
20 which was my letter to you, sir.

21 THE COMMISSIONER: Yes, all right.

22 MR. OLAH: Of October 20th, 1983.

23 THE COMMISSIONER: Yes. I don't think
24 you need to read them, I think what in effect Mr. Lamek
25 was saying was that we have no evidence against your
client.



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1
2 MR. OLAH: Yes. I enquired on June
3 24th and on June 28th and Mr. Lamek wrote back and
4 perhaps just because other Counsel may have not seen
5 copies of this letter, if I may just read a couple of
6 lines of it. This is the letter of Mr. Lamek dated
7 June 20th, 1983.

8 THE COMMISSIONER: Are they attached
9 to this? Oh, no, they are contained in it, yes, all
10 right.

11 MR. OLAH: They are contained in it and
12 I thought they were also attached as copies to the back
13 of the letter. I don't know if they are still there.

14 THE COMMISSIONER: I don't know, is
15 there anything more to this Exhibit 220?

16 MR. OLAH: All right, well, if I may
17 just read the letter to you or passages to it. He is
18 responding to my letter:

19 "I am not aware at this stage of any
20 evidence that might have 'an adverse
21 impact' on your client with the possible
22 exception of evidence which will
23 demonstrate that she was on duty at or
24 shortly before the time of onset of
25 critical symptoms for a number of
children whose deaths were regarded by



1
2 "the police as suspicious.

3 Even if the treatment of those deaths
4 as suspicious be correct there would
5 still be no reason to suspect any
6 involvement, intentional or otherwise,
7 by your client unless there was
8 evidence of a conspiracy or something
9 of that sort to link her to deaths that
10 occurred in her absence. I know of no
11 such evidence or even of any suggestion
12 that it may exist."

13 We wrote back in October, October 5th,
14 1983. to ascertain from Mr. Lamek whether this meant
15 that there would be no reporting with respect to Janet
16 Brownless under Section 5(2) of the Public Inquiries
17 Act.

18 Mr. Lamek in response to that letter
19 said:

20 "Thank you for your letter of October
21 5, 1983. I confirm that I am still not
22 aware of any evidence indicating any
23 misconduct on the part of your client
24 in respect of any of the deaths which
25 are under investigation by this
Commission. It necessarily follows that



C 6

1
2 "I am unaware of any basis for finding
3 of misconduct against your client, and
4 I repeat my earlier assurance to you
5 that if any evidence which might form
6 the basis for such a finding should come
7 to my attention I shall promptly let
8 you know."

9 So that as of October 10th, 1983 Mr.
10 Lamek knew of no evidence whatsoever that would form
11 the basis of a report with respect to my client at the
12 conclusion of the Commission.

13 THE COMMISSIONER: Mr. Olah, what I
14 don't understand is why you are unhappy with that?

15 MR. OLAH: Well, I am unhappy for this
16 reason, sir. You said in your statement of October 18th,
17 1983, and if I may read that to you.

18 THE COMMISSIONER: Well, the reason I
19 said it of course was because of your four demands, all
20 of which I wasn't going to comply with, the four demands
21 that you said "We require full particulars of all
22 allegations against her". The only allegation is that
23 the evidence might disclose, might disclose that she
24 was implicated in the deaths of the children.

25 MR. OLAH: Well, if I may refer to what
my concern is and maybe we can shortcut it.



1

2

THE COMMISSIONER: Yes, all right.

3

MR. OLAH: It is Volume 51, page 1372.

4

You will recall this is the Commissioner's statement

5

that you prepared and then read into the record, sir.

6

It was in response to Mr. Sopinka's concern and at the

7

very conclusion of it this is what you said at page

8

1375 or page 3 of the formal statement that was given

to Counsel:

9

"There is just one other matter I wish

10

to raise at this time."

11

You will find this in my letter of October 20th, that

12

passage is reproduced.

13

THE COMMISSIONER: Oh, yes, all right.

14

MR. OLAH: "Mr. Sopinka suggests that

15

no finding of misconduct can be made

16

against any person unless a formal

17

notice of misconduct is given and

18

presumably all the evidence given there-

19

after. I do not so interpret the

20

section which calls only for reasonable

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notice of the substance of the mis-

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conduct alleged against him and full

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opportunity to be heard in person or by

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counsel. I cannot imagine that there

25

could ever have been the slightest doubt



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"as to why each member of the Trayner team is here represented by Counsel funded by the Province. If such a doubt has ever existed, let me make it now quite clear that each of them may be found to be implicated either by accident or with deliberation in the deaths of the children."

Now, the concern is that I took that as meaning that you have given my client, Janet Brownless, notice and that notice was retroactive to the commencement of these hearings when standing was granted.

THE COMMISSIONER: Does that make any difference?

MR. OLAH: Yes it does, sir.

THE COMMISSIONER: Does it make any difference whether it is retroactive from the beginning or if notice were given now?

MR. OLAH: Well, it does make some difference to me because (a) if I had known that I was being given notice at the very inception of the hearings I would have conducted the hearing differently.

THE COMMISSIONER: No, I am sorry, I can't think of any conceivable way you could have



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conducted it differently. Now, you just tell me, give me one solitary example that you might have conducted it differently.

MR. OLAH: Well, a solitary example would have been that the lines of cross-examination would have been substantially different.

THE COMMISSIONER: Well, why do you think you are here? Why do you think you're here? Why do you think you are here and why do you think you are being - you are here to represent your client.

MR. OLAH: Well, I am here under Section 5(1), as I understand it.

THE COMMISSIONER: That you are interested.

MR. OLAH: That I am interested.

THE COMMISSIONER: But why are you any more interested than any other nursing assistant? Why would you be any more interested than any other? It is solely because your client was a member of the Trayner team. That is what I have tried to tell you.

MR. OLAH: Yes, sir. But, you see, in my respectful submission there is quite a distinction between a Section 5(1) person who is an interested party and a Section 5(2) party who is a target, a possible target party with respect to reporting.



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THE COMMISSIONER: But the only reason that you're interested is because you are a member of the Trayner team.

MR. OLAH: That's right. But once you tell me, sir, you take the position that I am a possible target person by giving me notice then --

THE COMMISSIONER: Well, Mr. Olah, I would be happy to oblige you if you tell me how I can do it. How can I do it?

MR. OLAH: Simply saying that, advising me at this time that my client is not or has not been given notice under Section 5(2).

THE COMMISSIONER: Let me just tell you what might happen, and this is not likely to happen because we have no evidence against your client and we have said that two or three times, but except for the fact that she was a member of the Trayner team and when that team was taken off the deaths stopped. That is the reason why you have become, you were allowed to become an interested party and why you were represented and why public funding is being given.

But supposing this should happen that X and Y and your client are under suspicion as being the perpetrator of some act that brings about the deaths of the children, I complete this hearing without having



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made up my mind which it was, I study all the matters
and I decide that it was, let us say, for example,
your client, a most unlikely event, what I am supposed
to do then, am I supposed to call you back and say I
have now decided that you are it and I want you and,
according to your letter, I then have to call all of
the evidence all over again. It just doesn't make any
sense.

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1 MR. OLAH: Mr. Commissioner, in
2 my respectful submission when there is no evidence,
3 or no basis for suggesting that I am a Section 5-2
4 or potential target person, then in my respectful
5 submission you cannot give me notice. However, should
6 you or your counsel become aware of any evidence
7 that gives some foundation for it, then notice can
8 be given and then the protective devices of Section
5-2 become operable.

9 THE COMMISSIONER: It may be then
10 that you have not received, I will say it is possible
11 that you have not received notice. The one thing
12 I do want you to understand is the course of this
13 inquiry. I do not intend under any circumstances to
14 call back any witness unless that witness has some
further evidence to give and that is demonstrated.

15 MR. OLAH: Well, that is a different
16 matter altogether.

17 THE COMMISSIONER: So I want you to
18 prepare yourself accordingly, if you haven't in the
19 past please do it now, from now on, prepare yourself.

20 MR. OLAH: I just want to go back
21 into the back row, sink into the back row and
22 pretend, or continue my understanding that I am a
Section 5-1 party.

23 THE COMMISSIONER: The time may come
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2 when I will have you removed from the room, that is
3 possible and you will be very happy to go.

4 MR. OLAH: I will be most grateful
5 to go.

6 THE COMMISSIONER: If no evidence is
7 disclosed that can conceivably affect your client,
8 at that point I will probably give you notice that
9 there is - instead of the notice that you are
10 appearing it is a notice of exactly the opposite,
11 you are no longer an interested party; but what I
12 don't want to happen, I don't want somebody to bring
13 out some evidence implicating your client only to
14 find that we haven't had your client here, or
15 represented during the whole thing, that is why I
16 am doing it, it is to prevent having to do it all
17 over again.

18 Now, any way you want me to do this
19 I will be happy to do it, if I can, without
20 disturbing the Commission.

21 MR. OLAH: I understand that, sir.
22 All I am asking is for you to say that no notice
23 has been given to my client under Section 5-2 and
24 that I am continuing to be only a Section 5-1 party
25 with the rights of a Section 5-1 party and I would
be most obliged for that.



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THE COMMISSIONER: You place yourself
in a different position from any of the other nurses?

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MR. OLAH: Yes, I do. I am the only
one you will recall that has not seen the full
Atlanta Report. I am in a very different position
than any member of the Trayner team. That is
basically why I take the position I do. I am only
a Section 5-1 party. The others may be and that is
a decision that you and your counsel have to make
that they are Section 5-2 potential target persons,
but I am not and that is the only ruling that I am
seeking.

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THE COMMISSIONER: Yes, all right.

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MR. OLAH: Do I need to argue my
position any further, sir?

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THE COMMISSIONER: No, I think I
understand what you are saying.

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MR. OLAH: I have the law and if
you are interested, I have given you all the cases
and in my respectful submission the law bears me
out strongly on that point.

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THE COMMISSIONER: Yes, all right.
Thank you.

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MR. OLAH: Thank you, sir.

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THE COMMISSIONER: Now I want to hear



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from anyone else. Mr. Lamek, do you want to come
at the end, or what do you want to do?

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MR. LAMEK: I think if I have anything
to say it may be more appropriate at the end, Mr.
Commissioner, but there may be no need for it.

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THE COMMISSIONER: Yes, all right.

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Mr. Brown?

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MR. BROWN: I don't have any submissions
at this point, Mr. Commissioner.

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THE COMMISSIONER: What position do
you take with respect to whether or not you should
be given notice, or do you prefer not to take any
position?

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MR. BROWN: Well certainly the
Statute provides at a certain point you are going
to make certain findings and notice had to be given.

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THE COMMISSIONER: When do I give
that notice? You see, the only way you can comply
with that is to give every conceivable adverse
finding by way of a notice to you, and that I must
say is something we did in Mississauga and I had
to tell all the counsel not to take it too seriously,
because everything that one counsel had ever alleged
in cross-examination against any of the parties in
Mississauga we incorporated, but I thought it was



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2 foolish then and I still think it is foolish now.

3 The one problem that the members of
4 the Trayner team are facing, the fact that they were
5 members of the Trayner team; that they were removed
6 on Sunday, the 22nd and the deaths ceased. That is
7 the evidence. The other is what is contained in the
8 Atlanta Report. I suppose in your case also you could
9 legitimately say everything that was brought out
10 in the preliminary inquiry. Anyway, you have nothing
11 to say.

12 MR. BROWN: I have no submission to
13 make, Mr. Commissioner.

14 THE COMMISSIONER: All right.

15 Mr. Strathy?

16 MR. STRATHY: Mr. Commissioner, I
17 think I can be fairly brief.

18 THE COMMISSIONER: Yes.

19 MR. STRATHY: I am here really for
20 two reasons this morning. One is to find out what
21 you propose to do with respect to notice. Because,
22 with respect, I wasn't too clear on that as a result
23 of your October 18th statement. Some of the things
24 that you have mentioned to Mr. Olah during the
25 course of his submissions this morning, suggest to
me that your view of what is required in terms of



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notice and my view of what is required may be quite similar in fact. So that is the first reason, simply to find out what you propose to do on notice.

The second reason is to make sure that you understand what my position is with respect to notice. I would not want to be met with the suggestion that by remaining silent I am somehow estopped at disagreeing with your view.

THE COMMISSIONER: No, no.

MR. STRATHY: So let me simply set out what my submissions are with respect to notice.

Firstly, I say that there has been no notice yet as required by Section 5-2 of the Public Inquiries Act. It is not enough to grant standing to a party, nor is it enough to grant funding to a party to in effect say at that point the person has notice that they have an interest and therefore an adverse finding may be made against them. In my submission all the right to standing does and all funding does is provide the party with a way of participating in the proceedings; the ability to cross-examine witnesses; the ability to call evidence if so advised.

So in my submission, none of us here who have standing, or indeed who have funding have



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2 thereby been given notice.

3 THE COMMISSIONER: Isn't this very
4 technical. Is there any real doubt in your mind as
5 to why you are here?

6 MR. STRATHY: With all respect we
7 understand why we are here. We understand why we
8 were granted standing. Our clients have an interest
9 in the proceedings within the meaning of the Statute.
10 But in my submission that is a different question
11 from what notice is required to a party before you
12 propose to make an adverse finding against that
13 party.

14 With respect, as a result of your
15 ruling this morning concerning the designation of
16 administrators, or administrator, if you come to
17 the conclusion that some child died as a result
18 of unnatural means, and if you propose to identify
19 the person or persons responsible, then it becomes
20 even more important that the notice be a specific
21 notice and that the party be specifically advised
22 of the child and the circumstances that may lead to
23 an adverse finding.

24 So in my submission it is not enough
25 to say generally to all the parties you are on
notice, you are dealing obviously with a very serious



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2 subject and with very serious consequences.

3 THE COMMISSIONER: I can probably
4 oblige you all by making up a form letter of some
5 sort and sending it out, but I don't want to do
6 something like that.

7 MR. STRATHY: No, I don't think anyone
8 would want you to do it. May I just simply say to
9 you what in my submission is required.

10 THE COMMISSIONER: Yes.

11 MR. STRATHY: That is if you do
12 propose to make adverse findings against any party,
13 or parties, that you must give them specific notice
14 before you do that, and you must give them at least
15 an opportunity to do one of two things; either persuade
16 you that some witness should be recalled, witness or
17 witnesses should be recalled on specific points,
18 if the party can satisfy you that they would have
19 dealt differently with that witness as a result of
20 the notice. You must also give that party an
21 opportunity to call evidence himself, or herself.

22 THE COMMISSIONER: Well, I certainly
23 intend to do that. I intend as soon as the Commission's
24 evidence is finished to turn to everyone and ask,
25 in order, in some sort of sensible order if they
wish to call ---



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MR. STRATHY: There must be a point to it in point of view of the party, it is only in fairness to the party, the party should not be put in a position of calling evidence holus bolus with respect to every one of the 36 children involved in these proceedings. Surely that is one of the points of notice, is to focus in on individual cases where you may or propose to make a finding of misconduct. That is what in my submission fairness calls for, is to say to the parties, you should focus on this particular case, or these particular circumstances.

THE COMMISSIONER: If you were to receive at the end of the Commission's case a summary of the evidence against you, not necessarily being accepted by me, I can't, I won't make up my mind entirely, at least I won't be responsible for what I have made up until I finally sign the report. So I can't stop in the middle of the report and say, I am leaning a little against your client at the moment, that can't be done, you can't run the Commission that way. The only thing that can be done, and I don't think it is necessary, because you are quite capable of doing it even better than we could, is to summarize the evidence that has been given so far against your client at the point where

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2 the Commission's evidence is complete. Is that the
3 sort of thing you want?

4 MR. STRATHY: No. In my submission
5 it goes beyond that, Mr. Commissioner, and calls for
6 some form of specific notice with respect to the
7 specific instances where it is proposed to make a
8 finding of misconduct, and to give the parties who
9 may be involved an opportunity to deal with that
particular evidence and particular case.

10 THE COMMISSIONER: That is fine,
11 except I don't see how it can be done, I do not
12 see how it is possible to do that. Because proposing
13 to make a finding, remember, I have made no finding
14 until I finally sign the report and hand it to the
Attorney General.

15 MR. STRATHY: In my submission no
16 party in these proceedings, certainly not any of
17 the nurses, or registered nursing assistants should
18 be called upon to lead evidence generally in effect
19 in rebuttal, or in defence, without being put on
20 specific notice about what the complaints are.

21 THE COMMISSIONER: The complaints
22 or something, but the finding is impossible. I
23 cannot say what the finding will be, because for
24 one thing the finding will not be made until after
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you have called your evidence, and the evidence you call may have a considerable effect on the finding you make.

MR. STRATHY: Surely before I or any other party calls evidence we are entitled to know whether it is proposed to make some complaint against us. Why should we be called to lead evidence generally without knowing anything more than there is a possibility that we may be implicated in one or more of 36 deaths.

THE COMMISSIONER: I know you are not - this is not the position, but would you please put yourself in my position, how can I do that?

MR. STRATHY: I understand.

THE COMMISSIONER: How can I possibly do that?

MR. STRATHY: I understand your position. I think what I am proposing is something that accommodates you as well. I am not suggesting you have to give notice now, or that you had to give notice at the beginning of these proceedings. What I do submit is that when you have heard at least the evidence called by Commission Counsel, and if you are minded at that point on the evidence that you have heard at that point to make a finding of



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misconduct against any party, that at that point you are required to give specific notice to that party indicating the cases and circumstances that give you concern.

THE COMMISSIONER: I don't mind putting it this evidence - it is a burden, but it can be done, this evidence has been adduced that might tend to show that your client is implicated in the deaths of these children and go over it and specify it. That will be difficult but it would be possible, but it is not possible for me to say I am minded now to find that your client is implicated by this evidence. Because while I might be minded at that time I wouldn't be minded 15 minutes later, and I certainly wouldn't promise to be minded at the end of the show.

MR. STRATHY: I think that raises two things. As you say we can all read the evidence, we can all understand, hopefully we can understand what the evidence has been in the course of the hearing. Surely there comes a point in the Commissioner's understanding of the evidence, and maybe it is at the point that he writes his report, where he says; I am going to find that Baby X died of a unnatural causes and that individuals A,B andC



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may have been the administrators.

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THE COMMISSIONER: I hate to tell you
the number of times I have changed judgments that
I have written, it is a shocking thing, but
fortunately the drafts don't get into public view.
So I can't ---

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MR. STRATHY: Surely there does
come a point, Mr. Commissioner, where you can say that
in specific cases you have specific concerns and
that the persons ---

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THE COMMISSIONER: Concerns are
possible, concerns are possible.

MR. STRATHY: I'm not saying you
have to pre-judge it, all I am saying there must
come a point where you say in fairness to the parties
who may be implicated I must give them specific
notice and give them an opportunity to persuade me
otherwise. That in my submission is particularly
so in view of the seriousness of the consequences.
Even more particularly so in view of the fact that
you propose, at least you consider your terms of
reference authorize you to name the individuals
involved.

THE COMMISSIONER: Yes, all right.



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3 The final comment I add and what I
4 understood you were suggesting to Mr. Olah is that
5 obviously you don't want to call the witnesses back.
6 But perhaps it may be after you have given that
7 specific notice to the party or parties concerned
8 that those parties can convince you that for one
9 reason or another the witness should be called back.

10 THE COMMISSIONER: But the reason
11 that I say that is I want to make it perfectly clear
12 to everybody that their main concern must be that
13 the notice will specify their implication in the
14 deaths of these children and that's what I want them
15 to bear in mind what ever witness goes through. If
16 you can establish, and this doesn't apply just to
17 you, but to anybody else, can establish that by
18 cross-examination or can elicit any information that
19 is of assistance in determining whether your client
20 could or could not be implicated, that is one of the
21 things you should be doing.

22 MR. STRATHY: Well, presumably most,
23 if not all counsel have interpreted their mandate
24 or their obligation in their fashion but it seems
25 to me that is a very different question from what is
the requirement of notice under the Legislation.

THE COMMISSIONER: All right, thank
you.



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MR. STRATHY: Thank you.

THE COMMISSIONER: All right, thank
you.

MR. SCOTT: Mr. Commissioner, can
I just raise a brief matter.

THE COMMISSIONER: Yes, all right.

MR. SCOTT: On this issue we have no
concern as such. I understand that it is your duty
to determine how the babies died and to tell the
public the name of the administrator of digoxin, if
that be your judgment about how they died. Whether
my colleagues here have noticed that that is what
you propose to do is something for them to say, not
me, I have nothing to say on that and we are ready
to deal with that issue. What I am concerned about
is the possibility, I put no higher than that, that
as you get down toward the end you may be minded
to use a word we have adopted this morning, to say
something like, and I take this merely as an example,
the administrator of the Hospital is a bum because
there should have been more nurses on at night.

THE COMMISSIONER: I doubt if that
is in my Terms of Reference.

MR. SCOTT: Now, I doubt if you have
authority to do that.



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THE COMMISSIONER: Yes.

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MR. SCOTT: It seems to me that
is beyond your terms of reference.

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THE COMMISSIONER: The cause of
death of the children. From time to time people
have indicated, at least the cross-examinations
seem to have indicated some negligence. I will
have to be persuaded in argument that that is within
my Terms of Reference.

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MR. SCOTT: Or you might be asked
by somebody to say that the man in the Hospital in
charge of radioimmunoassay didn't know what he was
doing.

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THE COMMISSIONER: That wouldn't be
a cause of death anyway.

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MR. SCOTT: No. All I am saying is
if you were ever minded to get into that question
I know that you will express your concerns either
in written or oral form to the Inquiry so that the
persons who would regard that as a finding of
misconduct against them would have an opportunity
to make some reply. I just want to reserve our
position on that subject.

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THE COMMISSIONER: Yes, all right.

Mr. Young, are you next? Who's next?



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3 MR. YOUNG: We have no submissions,
Mr. Commissioner.

4 THE COMMISSIONER: Yes, all right.
5 Miss McIntyre?

6 MS. MCINTYRE: Thank you,
7 Mr. Commissioner, I will be very brief in that
8 essentially we adopt the position taken by Mr. Strathy.
9 Our clients, unlike members of the Trayner team, are
10 not referred to by you in your statement of October
11 18th, nor have we been given the substance of any
12 evidence of wrong doing on the part of our individual
13 clients. Therefore, in accordance with Section 5(2)
we would assume that no notice has been given to us.

14 We would take the position, however,
15 that if any wrongdoing on the part of our clients is
16 revealed during the course of the Commission that
17 specific notice would be required in accordance with
Section 5(2) before findings could be made.

18 THE COMMISSIONER: I'm prepared
19 that there will be something in that, as I said.
20 But supposing someone gives that evidence that all
21 nurses at the Hospital for Sick Children, supposing
22 does give evidence of that nature that all nurses
23 were derelict in their duty, would you not feel
24 some obligation to cross-examine?
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3 MS. MCINTYRE: Certainly. Certainly,
4 Mr. Commissioner. I agree with you on that but for
5 example our particular concern would be with the
6 possibility of accidental administration of digoxin
7 and if evidence did come to light in that regard it
8 would be our position that before any finding of
9 wrongdoing on the part of an individual could be made
10 in your report, that specific notice would have to be
11 given.

12 With respect to the timing ---

13 THE COMMISSIONER: I would think
14 that if some nurse or a nurse in your case was not
15 represented, should some evidence implicating her,
16 not in a deliberate but in some negligent fashion is
17 concerned that you would feel an obligation to
18 protect her, would you not?

19 MS. MCINTYRE: Absolutely, absolutely,
20 but I don't think that, again, just a matter of
21 being here is sufficient to constitute the notice
22 that is required under the Statute because it may be
23 that on the final day of evidence, Commission evidence
24 there is someone that comes forward and said that
25 they saw acts administering digoxin that nobody had
known about that before, now, at that point in time
we can't possibly know what the evidence is in



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2 advance and it raises concern and at that point
3 specific notice in our view would have to be given
4 so that if necessary witnesses could be recalled on
5 specific points that were not previously raised.

6 I think that Section 5(2) has to be
7 read as a whole and it refers to giving notice so as
8 to allow full opportunity during the Inquiry to be
9 heard.

10 In my submission, unless the notice
11 is specific then there is not the full opportunity
12 to be heard and that with respect to timing the notice
13 has to be given in the timely fashion so that if
14 necessary witnesses can be called or prior witnesses
15 can be recalled on specific points.

16 THE COMMISSIONER: Yes, thank you
17 very much.

18 MR. McINTYRE: Thank you.

19 THE COMMISSIONER: Mr. Lamek, all
20 our efforts with the television seems to have gone to
21 naught for today, they are busily putting up cameras,
22 taking them down with absolutely no concern for the
23 rules that were laid down with respect to it.

24 If you can't do it quietly you are
25 not going to be allowed to take any pictures in this
hearing room at all and that must be understood. I



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2 haven't seen either of the manipulators before and
3 perhaps they just haven't been instructed but you
4 don't come in with cameras and move them around and
5 take them apart and do that sort of thing under any
6 circumstances and if you do that, if that is done you
7 will lose the opportunity to take pictures.

8 I want that to be borne in mind. I
9 don't know whom you represent but whoever you do
10 represent you are doing a tremendous injustice.

11 All right. Now, will you take your
12 camera out and remove it. The next time you come
13 in, if you do come in, do it properly, do it the
14 way that it has been arranged to be done.

15 Unless the camera is set up before
16 the proceedings start in the day there will be no
17 one allowed to come in bringing them from now on.

18 Yes, Mr. Knazan?

19 MR. KNAZAN: Yes, Mr. Commissioner,
20 I would like to put our position concerning notice
21 on the record. You may find it more pleasing than
22 some of the previous submissions and also to answer
23 your question as to how you can make this Inquiry
24 fairer or work better.

25 The position of myself and of
Miss Jackman on behalf of Mrs. Christie is that



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2 when you say I cannot imagine that there could ever
3 have been the slightest doubt as to why each member
4 of the Trayner team is here represented by counsel
5 funded by the Province is that we agree with that.
6 There was never the slightest doubt with this gloss
7 or qualification and that is that we accept that
8 we have notice of what we have notice of and not
9 of anything else and in order to explain that I have
10 to go to the background like Mr. Olah did and take
11 you back to May 31st. There is no volume number.
12 Miss Cronk has supplied me with a transcript. At
13 that time Miss Symes appeared on behalf of her
14 present clients and on behalf of 35 individuals and
15 you stopped her and said:

15 "THE COMMISSIONER: Are any of these
16 on what has been described as the
17 Trayner team?

17 MS. SYMES: Yes."

18 And you advised her to get separate
19 counsel, you may lose the whole brief. And then I
20 stood up on behalf of Miss Solomon's present clients
21 and you made the same comment "Are any of these on
22 the Trayner team, we may have the same problem". So,
23 that was the first suggestion as to why a separate
24 R.N.A. might be represented.
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3 Later in the same morning I asked you
4 for the Atlanta Report because it was necessary to
5 make strategic decisions and preliminary motions and
6 within a few weeks we had the Atlanta Report. In
7 addition, there were certain comments of Mr. Lamek
8 at the meetings which I am not allowed to disclose
9 but they were taken as further notice of the substance
10 of the allegations.

11 So that our position is that you not
12 only gave us notice but that you gave us the evidence;
13 in other words, everything that is alleged against
14 us we know what it is and we accept that 5(2) has to
15 be flexible in the circumstances of this case, since
16 you don't have any specific allegation of misconduct to
17 make against her or that you can't at this time but
18 that you want to facilitate the proceedings in the
19 way that you have explained to the previous counsel.

20 Now, naturally what flows from that
21 is that if at any point anything other than what is
22 in the portion of the Atlanta Report that we have and
23 anything else, comments made to us becomes into the
24 knowledge of Mr. Lamek or Miss Cronk we expect to
25 be advised immediately and then we would share both
Mr. Olah's and Mr. Strathy's position with respect
to those allegations very strongly, that that would



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2 be our position.

3 Now, in view of that - well, just on
4 the law here, when you are before a Court you are
5 obliged to show them authorities against you but I
6 don't know what my obligation is to you but I have
7 discussed this with Mr. Olah. For your information
8 when you are wrestling with this, Section 13 of the
9 Federal Inquiries Act, I have a photocopy of just
10 the section for you, it seems to not assist Mr. Olah
11 because it is more specific to Section 5(2) of the
12 Provincial Act. It refers to the charge of the
13 misconduct as opposed to the substance of the
14 misconduct.

15 It seems to use a little more specific
16 or technical word. I don't know if that is of any
17 assistance to you.

18 Secondly, that section was interpreted
19 in a case Advance Glass & Mirror Company Limited and
20 the Attorney General of Canada 1950 1 D.L.R. page 488.
21 I have attached it.

22 THE COMMISSIONER: Yes, all right.

23 MR. KNAZAN: I don't know if you
24 are bound by the Supreme Court of Ontario but it
25 is an old case, I'm not sure it would stand up given
the recent Doctrine of Fairness which has been



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2 established.

3 They say that they interpret Section
4 13 of the Federal Inquiries Act very restrictively
5 and say that the people don't even have a right to
6 be present at the full hearing in order to comply
7 with it. So, if that is of any assistance to you.

8 Now, with regard to how, in view of
9 my comments, it is my suggestion that this Commission
10 perhaps could be fairer towards the nurses on the
11 Trayner team who have this sort of floating notice
12 to which I have referred. If the hearings were not
13 set up in such a way as to reach a dramatic end with
14 the calling of the nurses it is an inquiry in which
15 you will have to consider all of the evidence. It
16 is not an Opera in III Acts or a Play in V Acts and,
17 just as an example, we have lost this week because
18 no witnesses were available; we have lost all of
19 our schedules, we have lost this court room, whereas,
20 if Mr. Lamek and Miss Cronk had wanted to spend
21 Sunday with Mrs. Christie and Miss Jackman and myself
22 she could have been called this week. I don't see
23 necessarily why there has to be this inexorable
24 buildup to the calling of the nurses at the end of
25 the case.

23 THE COMMISSIONER: Partly of course
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3 what Mr. Strathy has said is partly that they have
4 to know what if anything they have to face and that
5 is the reason. It would seem to me to be unfair to
6 call the nurses at the beginning. Maybe I'm wrong,
7 maybe it would have been fairer to call them at the
8 beginning.

9 MR. KNAZAN: Well, with respect,
10 Mr. Commissioner, that is perhaps a prejudgment of
11 what will emerge. I don't want to say anything in
12 Mr. Ortved's absence but just as an example, just as
13 an example, the evidence of Dr. Costigan was that he
14 wandered into Matthew Lutes' room, that he was on
15 one night, he was just there working and he wandered
16 over to the ward and he happened in on this baby
17 when he had an arrest and the evidence on the
18 preliminary was that he may have been on the ward
19 on the Friday night when Miller died but no one is
20 saying, even suggesting that as a result of some sort
21 of numbers game Dr. Costigan may be found to have
22 been implicated in these deaths.

23 My first comments about the notice
24 were that that is what I have notice of, that she
25 may have been there when some of these deaths occurred.

So, there is no difference between
the doctors and the nurses in that case. That was



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2 the point I was making. So that to say that the
3 nurses have to be called last so that they know the
4 case against them, whereas, all of the doctors who
5 have been present at the deaths have been called
6 before is to perhaps put a tone on the hearing which
7 is not necessarily justified. That is just a
8 suggestion. I am not saying that she should have
9 been called but if this happens again, for instance,
10 she is ready to be interviewed and to be called as
11 a witness so that it doesn't take on the drama or
12 that the evidence isn't slanted in that way.

13 THE COMMISSIONER: Yes, all right,
14 thank you.
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THE COMMISSIONER: Mr. Labow?

MR. LABOW: Mr. Commissioner, Mr. Tobias is going to state the position of the parents, for all the parent counsel.

THE COMMISSIONER: Yes, all right.

MR. TOBIAS: Thank you, Mr. Commissioner.

We take no specific position with respect to the giving of notice under Section 5-2. What we do have a concern about is with respect to the concept of giving particulars of the alleged misconduct that might be found. Our concern is simply this. It may very well be, and it appears likely that your conclusions may be the result of any number of small pieces of evidence taken together and woven into a pattern which points in a certain direction. The obvious thing that flows from that is it may be that any shred of evidence which we hear may in fact be the piece of evidence that points to the complicity of a certain individual.

If you were to commit yourself to give specific particulars of the alleged allegations of misconduct, you might leave yourself in a position where all you could do is give a blanket statement that any piece of evidence may be a piece of evidence



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2 that certain counsel should direct themselves to. If
3 you did not do that, if you backed away from giving
4 that blanket sort of statement, then you may in fact
5 be making an undertaking that you can't possibly
6 comply with, given the way the evidence is unfolding,
7 and given the very nature of this Inquiry.

8 THE COMMISSIONER: That is one of the
9 things that does concern me.

10 MR. TOBIAS: Well, that is what
11 concerns us the most.

12 THE COMMISSIONER: It does happen too
13 that even with the longest list of Mississauga
14 breaches of something or other against all of the
15 people, I was delighted that no one noticed that there
16 were several things I said in the report that really
17 had not been included in the notice. Because it is
18 impossible, it is almost impossible to specify all of
19 the evidence that is going to affect it, it is the
20 substance, that's really what my problem is, and that
21 is what makes it so difficult to comply with the
22 reasonable request of the nurses for particulars.
23 It is as if somehow or other in a criminal case the
24 Crown were bound by his address to the jury, which of
25 course he is. The jury is entitled to take into
consideration everything that has taken place. The



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accused knows that he is charged with a particular crime, and he defends himself accordingly, he doesn't know what the jury are going to take in their heads to convict him or to acquit him. So this is the problem. I don't know how this notice, if this notice means that I must sell everything that possibly can be held against a particular person I don't think it is possible to do it.

MR. TOBIAS: That is specifically our concern Mr. Commissioner, and I think understating that is the fact that it may well be counsel for the interested parties who are in a better position than even yourself to appreciate some of these very fine patterns to the evidence. It is certainly conceivable to me that any particular counsel may clue in to a certain pattern, or a certain piece of evidence which occurs to him to be relevant but which might not even cross your mind, you might not even consider that argument. It seems to me the fact they are sitting here day in and day out, hearing all of the evidence, being provided with transcripts of the daily proceedings, most of them having been given a copy of the evidence of the Preliminary Inquiry so that they can read in advance what certain witnesses are likely to say; and given the fact that all documents are



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2 produced for them, it seems to me somewhat redundant
3 almost to ask that the Commission give specific guide-
4 lines with respect to what the allegations are.

5 So I am concerned that:

6 (a) It can't be done; and

7 (b) might prejudice the position of
8 the entire Inquiry; and

9 (c) that to a very real extent it is
10 redundant.

11 Thank you.

12 THE COMMISSIONER: Yes, thank you.
13 That I take it is all you want to say, Mr. Shinehoft?

14 MR. SHINEHOFT: I concur with my
15 friend Mr. Tobias.

16 THE COMMISSIONER: All right. I am
17 not too sure whether I should call on you first or
18 then Mr. Olah, or the other way around.

19 MR. BROWN: Might I perhaps interrupt
20 and solve that dilemma?

21 THE COMMISSIONER: Yes.

22 MR. BROWN: If I could in light of the
23 remark that you made to Mr. Tobias about procedure
24 with the Mississauga Inquiry. We fully support the
25 position that Mr. Strathy has taken and it was our
understanding it was really a question of timing and



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that Section 5-2 notice had not been given, but simply
a matter of when and how it could be given.

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In light of your remarks I would submit
that at a minimum, before the report is signed and
handed to the Attorney General, if in that report you
propose to make any finding of misconduct in respect
of a person at that time specific notice under Section
5-2 would have to be given.

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THE COMMISSIONER: It is a shocking
suggestion, really it is, it is shocking. You mean,
pause right at the end, after having done the whole
thing and say, come on, let's do it again, that is
what really you are suggesting.

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MR. BROWN: No, I am not suggesting
that.

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THE COMMISSION: You can do it again
but you will have to get another Commissioner.

MR. BROWN: I am not suggesting that
it be done again. We fully understand why we were
granted standing and have certainly approached the
evidence in that light. As you yourself said Mr.
Commissioner, judgments can be rewritten several times.
It may well happen that in the course of analyzing the
evidence a different light is put on, perhaps a light
which was not apparent during the course of the



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Commission. If on the basis of that interpretation you intend to make certain findings against people, I would submit at that time specific notice of those findings --

THE COMMISSIONER: I don't think that is what the Section means. I think the Section means, or should mean, but anyway I am not going to make a definitive statement now, it should mean that you should know what you are facing. You should have an opportunity to give evidence, and you should have an opportunity to answer the allegation, that's all.

Now, the fact that one particular piece of evidence, which doesn't loom too large in one's mind, seems somehow or other when I put all the things together to loom very large indeed, I can't call you back for that, you have to be prepared for that. You have to say, that is what counsel do all the time in every case. They know they always run the danger that the judge is going to reserve, or he is going to start reading and picking up something, or that something is going to come into his head that didn't come into his head before, that is something that happens and I don't think this is any different from any other case.

MR. BROWN: With respect
Mr. Commissioner, we are not denying our obligation



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2 to be prepared to anticipate the evidence that will go
3 in. However, I submit the Statute does provide that
4 before a finding of misconduct is made in the report
5 notice has to be given. I think the statutory language
6 removes this from the general course of litigation and
7 judgments that occur in litigation --

8 THE COMMISSIONER: Is it any more than
9 the obligation of fairness that runs through, it is a
10 thread that runs through all justice, all natural
11 justice, that you always have the other side, you
12 always give them an opportunity to answer, is it any
13 more than that?

14 MR. BROWN: We have certainly been
15 given the opportunity to hear the other side, there is
16 no denial of that. I would submit, however, that the
17 Statute requires more and that before a finding of
18 misconduct is made in the report that a notice be
19 given under Section 5-2.

20 THE COMMISSIONER: Yes, all right.
21 Yes Mr. Lamek?

22 MR. LAMEK: Very briefly
23 Mr. Commissioner, because there are only a couple of
24 things on which I think I can be of any help at all.

25 Certainly I accept the general
proposition, and urge it upon you, advanced by



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Mr. Olah that Section 5-1 standing is not automatically
to be treated as Section 5-2 notice.

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Indeed I was Associate Counsel to Mr.
Justice Hughes on Waste Management where the
Divisional Court said just that. Neither do you need
to be in jeopardy of an adverse finding under 5-2 in
order to have standing under 5-1, and I think that much
is clear and I don't perceive that to be really an
issue here.

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So far as the notice is concerned
Mr. Commissioner, whatever these words may mean in 5-2,
I suggest they do not need to be construed as requiring
you, or me, or anybody to give specific notice on
particular facts and evidence before you are able to
make a finding of misconduct. You are required before
making such a finding, sir, to give reasonable notice
of the substance of the misconduct alleged; the
substance of the misconduct. That in my submission
is a very far cry from saying you are required to give
notice of the particulars of the evidence upon which
such an allegation might be based. Of course as you
have said, sir, and as Mr. Tobias has urged upon you,
it may be impossible until you come to view the
evidence as a whole to know which particular piece of
evidence propels you towards one conclusion or another.



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Nevertheless I suggest, sir, that it is necessary that there be some evidence upon which you might propose to make an allegation, and notwithstanding what I have said about the particular language of Section 5-2, I deem it be my responsibility at least, if I become aware of particular evidence that may implicate one or more people, to bring it to the attention of their counsel, and I think fairness requires no less. Not as a matter of strict obligation under the Statute, but I think it an appropriate way to proceed.

I know of no law, Mr. Commissioner, that requires the giving of formal or written notice. I read Section 5-2 as I think you do, sir, as requiring you to alert people to the jeopardy in which they may be, it is a principle of fairness. I don't know that form makes very much difference to that.

In that context may I say something about Mr. Olah's submission with respect to his particular position. It may indeed be arguable that the delivery of the full Atlanta Report on the particular terms and conditions subject to which it was delivered is tantamount to notice under Section 5-2.

You will recall sir that the complete



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and unexpurgated report was given to certain counsel who acted for those, who in your judgment and in mine, would or could be adversely affected by the contents of that report. I will not say who received it. I will say of course that Mr. Olah did not. From that one may reasonably infer that it was not considered that his client would be adversely affected by the contents of that report. Therefore, if the delivery of the report under those conditions be tantamount to notice, it did not so extend to Mr. Olah's client, sir.

I don't think I can be of assistance in any other matters, Mr. Commissioner, those are the particular things I thought it appropriate to say to you.

THE COMMISSIONER: Yes. Mr. Olah.

MR. OLAH: There are a couple of areas I would like to assist you on, Mr. Commissioner, other than simply my formal position, because having done some of the reading of the case law I might be in a position to assist you, sir.

First of all I would like to point out that any ruling you make with respect to this issue of notice goes to jurisdiction, and consequently it is reviewable by a supervising tribunal, it is not one of those decisions that falls within the ambit that the



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Divisional Court has indicated time and time again.

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THE COMMISSIONER: It is all academic at the moment, isn't it, because I doubt that this is the sort of thing I would say that the Divisional Court would practically encourage an application for in any other matters, but in this sort of thing the Divisional Court will say, well, how are you going to give, how are you going to make any finding against anybody so why should we receive it.

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MR. OLAH: I am not making any suggestion. All I am saying is it is a fundamental case because it goes to jurisdiction and it is one that deserves some attention and concern, that is the only thing I am saying.

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THE COMMISSIONER: It deserves some attention and I am giving it this attention, I am giving it now and I will give it some more.

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MR. OLAH: I understand. I am simply trying to point out to you it is a matter of great concern because of the implications it has, and I thought it is my duty to tell you that.

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THE COMMISSIONER: Yes, all right.
MR. OLAH: Now you say there has been some suggestion from some parties, such as Mr. Tobias, that notice is redundant and cannot be done. This is a



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matter of statute. The Legislature has decreed that certian protective devices be in place before a report is made.

Now Mr. Knazan seems to suggest that there is some law that distinguishes the Landreville case. I looked at the case and it is quite different. We have to go to Landreville which is probably the most close parallel in this situation.

You will recall in Landreville what happened was that there were general terms of enquiry. The matter adjourned without notice being given and a declaration was brought in Federal Court to quash the Commissioner's report. That was a Commissioner, a very renowned Commissioner, the ex Mr. Justice Rand of the Supreme Court of Canada, and the Court held that there - and the wording was very slightly different.

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As Mr. Knazan points out - and you will find the Statute reproduced at page 402 but it is very analogous to the situation and the wording of this Statute here.

THE COMMISSIONER: Yes.

MR. OLAH: If you turn to page 402, sir, you will see that Section 13 of the Inquiries Act as it then was set out. It indicated that:

"No report shall be made against any person until reasonable notice ..." which is the wording we have here:

"...has been given to him of the charge of misconduct alleged against him and he has been given full opportunity to be heard in person or by counsel."

When you compare that with the section that faces you, sir, you will see that really the only material difference is that in our section it says substance rather than charge but the intention and the purport of the section is identical.

Now, in the Landreville case, if you turn to page 405, after a review of some of the common law principles, review of the Crabbe case, which was one of the cases I supplied you with, at



page 405, this is what the court concluded:

"In my opinion, similar reasoning applies in this case. I agree with the plaintiff's position that in the circumstances here, the Commission should have been reconvened. The substance of the proposed allegations of misconduct set out in Conclusions II and III should have been made known to the plaintiff in accordance with Section 13."

THE COMMISSIONER: Well, what is wrong with my saying now, whether it is the Federal Act or Provincial Act, whether it is the charge or the substance of, the charge of misconduct or the substance of misconduct that the charge against you or the substance of the misconduct against you that might be, is that you were implicated in the deaths of one or more of these babies, what's wrong with that?

MR. OLAH: First of all it is not sufficiently particular. All of the case law says that you have to be sufficiently particular so that I can focus my response.

THE COMMISSIONER: All right, why an



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overdose of digoxin, how's that?

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MR. OLAH: With great respect, that cannot be done. The problem that anyone on the Trayner team faces, are we talking about 36 children, are we talking about one child, are we talking about seven children?

THE COMMISSIONER: We are talking about 36 children, I can answer that one right now.

MR. OLAH: I beg your pardon?

THE COMMISSIONER: We are talking about 36 children.

MR. OLAH: Well then, with the greatest of respect, there has to be.

THE COMMISSIONER: You don't have to have administered digoxin to all of them, you could have done it to just one. So, believe it or not, I do want to be fair to all of the Trayner team, I just don't know how.

MR. OLAH: I understand your problem and I think Mr. Strathy has fairly put to you a solution that is (a) complies with the Statute and (b) gives you the kind of flexibility that you are looking for and that is simply ---

THE COMMISSIONER: While he said that when I was minded to find against his client



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2 or anyone else's I was to then - when I was minded
3 to find against his client I should then give some
4 kind of notice. That I can't, I can't accept because
5 that is what I must decide after giving him every
6 opportunity. I just don't understand what more I
7 can say to the members of the Trayner team than that
8 they might be implicated in the deaths of these
9 children by negligence, by deliberate act or by
accidental act in the overdose of digoxin.

10 MR. OLAH: Well, in my respectful
11 submission you have to go further in order to comply
12 with the Statute.

13 THE COMMISSIONER: Well, what do I
14 have to do?

15 MR. OLAH: You have to give
16 particularity.

17 THE COMMISSIONER: The substance is
18 what I am asking you.

19 MR. OLAH: Yes, sir.

20 THE COMMISSIONER: That is what the
21 Statute says?

22 MR. OLAH: Yes, sir, and the substance
23 would in my respectful submission go to me. If
24 we go back to the common law cases that I have
25 provided you, which just talk about reasonable



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3 notice and don't even bring in the word substance
4 which, in my respectful submission, indicate a higher
5 level of duty upon you, sir. They all say, and if
6 you want to go let's just pull out one of the cases,
7 they talk about the kind of particularity that is
8 required.

9 I have read the passage in the
10 Landreville case which is very clear about the kind
11 of particularity that was required in that case.
12 If I may then direct you to ---

13 THE COMMISSIONER: Remember that the
14 first finding of Mr. Justice Rand was not set aside.

15 MR. OLAH: No, but the latter - findings
16 II and III - 1 was ---

17 THE COMMISSIONER: 1 was that he had
18 misconducted himself before some other tribunal,
19 or at least had been contemptuous of it.

20 MR. OLAH: That was finding II, sir.

21 THE COMMISSIONER: Finding II, and
22 finding III was what?

23 MR. OLAH: Finding III was that the
24 conduct was unbecoming, both in his personal life
25 and in his judicial life.

THE COMMISSIONER: Well, probably
the terms of reference might have justified it but



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2 he didn't give any notice of that. He did give
3 notice apparently of the first instance. However,
4 I will have to read that one again. But I am not
5 at all sure that the Landreville case, even with
6 these differences on all fours because the findings -
7 the first finding - let me find it.

8 MR. OLAH: The conclusions are found
9 at page 401, sir.

10 THE COMMISSIONER: 401?

11 MR. OLAH: Yes. You will see that the
12 first finding was that there was an obligation on
13 Mr. Justice Landreville. If you look at the second
14 one.

15 THE COMMISSIONER: That the transaction
16 "...justifiably gives rise to grave
17 suspicion of impropriety. In that
18 situation it is the opinion of the
19 undersigned that it was obligatory
20 on Justice Landreville to remove that
21 suspicion and satisfactorily to
22 establish his innocence, which he has
23 not done."

24 Now, that one was upheld, was it not?

25 MR. OLAH: Yes, but the actual
findings, II and III, which were the ones of
misconduct. I simply went to whether he had met



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2 some sort of an evidentiary burden. The findings,
3 the substantive findings II and III, II was that
4 the conduct of Justice Landreville in giving
5 evidence constituted gross contempt, same page,
6 of these tribunals. That was testimony he gave
7 in the perjury trial of Farris:

8 "...and a serious violation of his
9 personal duty as a Justice of the
10 Supreme Court of Ontario, which has
11 permanently impaired his usefulness as
12 a Judge."

13 So, finding II was gross contempt,
14 that was quashed, finding III was that there was
15 a derelection of his duty as a public official and
16 his personal duty as a Judge. Both of those
17 specific findings of misconduct were quashed for the
18 lack of particular notice being given.

19 THE COMMISSIONER: Yes, all right.

20 MR. OLAH: And if you go to the
21 Crabbe case, which is the one that is referred to,
22 and it is found at Tab 6 of your materials, in a
23 very different context, very different Statute,
24 if I can ask you to turn to page 724 you will see
25 what the Federal Court said in that instance.

At page 724, bearing in mind that we



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are talking about reasonable notice this is what the Court said:

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"Here, as I see it, if a possible consequence for the Appellant was that his licence might be suspended it was necessary that there be combined with the investigation the examination of a 'charge' against him and it was necessary that he be given an opportunity to make a defence to that charge. It follows, in my opinion, that he was entitled to be notified of the charge before being called upon to make his defence."

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And turning to page 727, about two-thirds of the way down:

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"It is without doubt highly undesirable that the functioning of Courts of Investigation into shipping casualties be hampered or impeded by technicalities..."

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And dropping down:

"...but it seems to me to be equally undesirable that the certificates of officers and licences of pilots should



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"be subject to cancellation or
suspicion as the result of a procedure
which does not guarantee to them the
elementary rights to be informed of
what it is that the officer or pilot
is to answer for and to be given a
fair opportunity to make his answer
thereto. He cannot as I see it be
afforded the second until he has been
afforded the first."

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3 In other words, he cannot have full
4 opportunity unless you have been informed of what
5 it is that you're answering to; not something vague,
6 not something general. It has to be particular.
7 In fact, that is the conclusion that they reach at
8 page 736:

9 "With deference, I cannot agree that
10 the fact the parties may have had a
11 good idea of the allegations of wrong-
12 ful acts or defaults that might be
13 alleged against them is sufficient.
14 In my view, those wrongful acts or
15 defaults ought to have been specifically
16 alleged or particularized at the end
17 of the first stage of the proceedings,
18 so that the parties could consider
19 what, if any, evidence they might wish
20 to call to rebut those allegations."

21 THE COMMISSIONER: Yes, but you
22 might be, you see, in the case of the management of
23 a ship, there might be, well, particulars, what did
24 you do, were you drunk at the time, did you point
25 north when you should have pointed south and all that
sort of thing, but here the allegation can only be -
well, can't only be, there can be other things as well -



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2 but the main allegation is that the digoxin or an
3 overdose of digoxin was administered accidentally or
4 by design.

5 MR. OLAH: But are we talking about
6 one case, which case?

7 THE COMMISSIONER: 36.

8 MR. OLAH: Are we talking about 36?

9 THE COMMISSIONER: 36, yes.

10 MR. OLAH: In my respectful
11 submission there must be evidence that warrants that
12 and that the substance of that evidence ---

13 THE COMMISSIONER: Well, there must
14 be evidence that warrants it if I am going to make
15 the report. But why does there have to be evidence
16 of it now before you given your notice?

17 MR. OLAH: Because, Mr. Commissioner,
18 in order to afford and to mount a proper defence for
19 any of us we must know what it is that we are facing.

20 THE COMMISSIONER: And you will
21 know that, you will know that by the time the
22 Commission's evidence is finished. You will know
23 exactly what you are facing.

24 MR. OLAH: But the problem is, sir,
25 that if we are to be given a full opportunity of
hearing, which is what the Statute contemplates,



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then in order to do that we must know what case we
have to meet.

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Now, virtually all of the evidence
in this Commission is going to be led by Mr. Lamek
and unless we know in advance what it is particularly
to our client that is of concern you cannot cross-
examine with any real degree of certitude or knowledge,
which is really what is required to present a case.

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Certainly you cannot meet any allega-
tions unless you know in advance what they are. That
is what all these cases talk about and that's what
the Supreme Court of Canada talks about in the
Samejima Case, which I gave to you. They talk about
particularity. That is the golden thread that runs
through all these cases and to suggest that general
and vague particularity is sufficient in my respectful
submission is to miss the essential thread that runs
through all these cases.

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THE COMMISSIONER: Yes, all right.

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MR. OLAH: Now, when you give us
that particularity and, in my position you won't
because there is none, and therefore I would like to
leave right now, but when you do, in my respectful
submission you have got to give that particularity
and it goes to your jurisdiction and I would sure



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hate to see a situation like Landreville occurring
on a matter that is of this importance, this matter
of great public importance.

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THE COMMISSIONER: All right, thank
you. I will consider the problem.

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Is there anything else before we
adjourn until next Monday?

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MR. OLAH: Well, I would request
that you make a ruling with respect to my client
either today or whenever we reconvene so that I know
with some certitude what my position is.

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THE COMMISSIONER: Request away.

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MR. OLAH: I'm sorry?

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THE COMMISSIONER: Request away.
I'm not sure, I don't make any promises that I will
make a ruling in the immediate future.

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MR. OLAH: Well, I would like you
to then indicate that you are not going to make
a ruling so that I may consider what position I
have to take.

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THE COMMISSIONER: I heard, I heard.

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MR. OLAH: Thank you very much.

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THE COMMISSIONER: All right, thank
you.

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MR. YOUNG: Mr. Commissioner?



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2 THE COMMISSIONER: Yes, Mr. Young?

3 MR. YOUNG: I wonder if we might
4 ask Mr. Lamek if he has had any success in reschedul-
5 ing Dr. MacLeod and if so when.

6 MR. LAMEK: Yes, a couple of things,
7 Mr. Commissioner. So far as I am aware Dr. MacLeod
8 will be back on the 21st to complete his evidence.

9 THE COMMISSIONER: 21st is?

10 MR. LAMEK: Is next Monday.

11 THE COMMISSIONER: Next Monday, I
12 see, okay.

13 MR. LAMEK: And will be followed
14 by Dr. Fay. Copies of his report have been delivered
15 to all counsel this morning I understand, or his
16 notes on the various cases.

17 The week of the 28th we will have
18 Dr. Kauffman here and the week of December 5 we will
19 have Dr. Hastreiter here.

20 He, as I presently understand it,
21 will be followed by Dr. Mirkin.

22 MR. SCOTT: Is it Mr. Lamek's guess
23 at the moment that Dr. Fay will take most of the week
24 or is he just uncertain about that?

25 MR. LAMEK: Our guess is probably
not the whole of the week.



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3 Just one other thing, Mr. Commissioner,
4 if I may. There is a revised version of Exhibit 232
5 which was the document as I recall it introduced
6 when Dr. Phillips was in the box on the post mortem
7 digoxin testing that has gone on at the Hospital.
8 This is a further revision. There was an Exhibit
9 232A on which certain changes had been noted. I
10 understand this has now received the blessing of
11 Dr. Phillips and the Hospital and I ask that it be
12 marked as Exhibit 232B and copies have been provided
13 to other counsel.

12 THE COMMISSIONER: Yes, all right,
13 thank you.

14 ---EXHIBIT NO. 232B: Revision of Exhibit 232.

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16 THE COMMISSIONER: Is there anything
17 else? Have you anything further?

18 MS. CRONK: No.

19 THE COMMISSIONER: Is there anything
20 else anyone wants? Oh, I think Mr. Millar was
21 supposed to speak to you - this room is going to be
22 occupied by the Municipal Board on some matter
23 tomorrow but he has spoken I think to you. Anyway,
24 I spoke to the Chairman and he said that there is no
25 objection if you want to leave your papers - you can't



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leave them on the table, you will have to leave them
on the side of the room somewhere and we can probably
find space upstairs I suppose if you have anything
else.

Yes, Miss Cronk?

MS. CRONK: Sir, just on that, we
have also made arrangements that the reporters' room
is available for counsel to stack their papers in
there.

THE COMMISSIONER: Yes, all right.

---Discussion off the record.

THE COMMISSIONER: All right then
until Monday at 10 o'clock.

---Whereupon the hearing adjourned at 11:45 a.m.
until Monday, November 21st, 1983 at 10:00 a.m.

